

HOUSE BILL No. 2021

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-27.

Synopsis: Design-build public works projects. Authorizes a public agency to enter into a design-build contract for the performance of a public works project by the public agency. Establishes the procedures for solicitation and award of a design-build contract.

Effective: July 1, 2001.

Scholer, Kuzman

January 17, 2001, read first time and referred to Committee on Public Policy, Ethics and Veterans Affairs.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

HOUSE BILL No. 2021

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 5-27 IS ADDED TO THE INDIANA CODE AS A
- 2 **NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,**
- 3 **2001]:**
- 4 **ARTICLE 27. DESIGN-BUILD PUBLIC WORKS PROJECTS**
- 5 **Chapter 1. General Provisions**
- 6 **Sec. 1. Notwithstanding IC 4-13.6-5-11, IC 5-16-2-2, and**
- 7 **IC 36-1-12-16, a design-build contract awarded as provided in this**
- 8 **chapter is valid and enforceable.**
- 9 **Chapter 2. Definitions**
- 10 **Sec. 1. The definitions in this chapter apply throughout this**
- 11 **article.**
- 12 **Sec. 2. "Construction services" means services provided under**
- 13 **a design-build contract that are not design services.**
- 14 **Sec. 3. "Design-build contract" means a contract between a**
- 15 **public agency and a design-builder to furnish:**
- 16 **(1) architectural, engineering, and related design services as**
- 17 **required for a given public project; and**

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(2) labor, materials, and other construction services for the same public project.

Sec. 4. "Design-builder" means a person that furnishes the necessary design and construction services under a design-build contract, whether by itself or through contractual arrangements.

Sec. 5. "Design criteria developer" means a qualified person registered under Indiana law that is responsible for preparing the design criteria package for a specific design-build project.

Sec. 6. "Design criteria package" means a set of documents that provides sufficient information to permit an offeror to prepare a response to a public agency's request for proposals.

Sec. 7. "Design services" means those services that are:

- (1) within the scope of practice specified by IC 25-4 for architecture or IC 25-31 for professional engineering; or
- (2) performed by a registered architect or professional engineer in connection with the architect's or engineer's professional employment or practice.

Sec. 8. "Offeror" means a person who submits a proposal in response to a request for proposals.

Sec. 9. "Person" means an individual, a firm, a partnership, a limited liability company, a joint venture, an association, a corporation, or another legal entity.

Sec. 10. "Proposal" means an offer by a potential design-builder to enter into a design-build contract for a public project in response to a request for proposals.

Sec. 11. (a) "Public agency" means a state agency (as defined in IC 4-13-1-1), a state educational institution (as defined in IC 20-12-0.5-1), a unit (as defined in IC 36-1-2-23), or a body corporate and politic created by statute.

(b) The term does not include the Indiana department of transportation.

Sec. 12. (a) "Public project" means the process of designing, constructing, reconstructing, altering, or renovating a public building, an airport facility, or another structure or improvement that is paid for out of a public fund or out of a special assessment.

(b) The term includes any of the following:

- (1) A building or structure leased by a public agency under a lease containing an option to purchase.
- (2) A public improvement to real property owned by a public agency.

(c) The term does not include the process of designing, constructing, altering, or repairing a highway, street, or alley.

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Chapter 3. Design-BUILDER Qualifications

Sec. 1. At the time design services or construction services are to be provided under a design-build contract, a design-builder must:

- (1) be a person;
- (2) employ persons; or
- (3) have as a partner, member, joint venturer, or subcontractor, a person;

licensed, registered, certified, or otherwise qualified to provide the design services and construction services required to complete the public project and do business in Indiana.

Sec. 2. A design-builder may contract with the public agency to provide design services and construction services that the design-builder is not itself licensed, registered, or otherwise qualified to perform if the design-builder provides the services through subcontracts with licensed, registered, or otherwise qualified persons in accordance with this article.

Sec. 3. This article does not limit or eliminate the responsibility or liability owed by a person providing design services to the public agency or other third parties imposed by Indiana law.

Chapter 4. Technical Review Committee

Sec. 1. (a) Before entering into a design-build contract, a public agency must appoint a technical review committee of not fewer than three (3) individuals.

(b) The members of the technical review committee must include the following:

- (1) A representative of the public agency.
- (2) Any of the following:
 - (A) An architect registered under IC 25-4.
 - (B) A landscape architect registered under IC 25-4.
 - (C) A professional engineer registered under IC 25-31.

(c) A member of the technical review committee who is an architect, a landscape architect, or a professional engineer may be:

- (1) an employee of the public agency; or
- (2) an outside consultant retained by the public agency for the specific purpose of evaluating proposals submitted under this article.

(d) The design criteria developer may serve either as a full member of the committee or as a nonvoting adviser.

Sec. 2. (a) A member of the technical review committee may not submit a proposal for or furnish any design services or construction services under the design-build contract.

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(b) The design-builder may not delegate or subcontract professional services or construction services under the design-build contract to a member of the technical review committee.

Sec. 3 (a) The technical review committee shall do the following:

- (1) Qualify potential design-builders as provided in IC 5-27-5.
- (2) Rate and score qualitative proposals as provided in IC 5-27-7.

(b) The technical review committee may interview persons submitting proposals and conduct other business necessary to fulfill the purposes of this article.

Sec. 4. Except for interviews of persons submitting proposals, meetings of the technical review committee shall be open to the public and subject to IC 5-14-1.5.

Chapter 5. Request for Qualifications

Sec. 1. When design-build services are considered for a public project, a public agency shall publish a notice of a request for qualifications under IC 5-3-1.

Sec. 2. Each notice provided under section 1 of this chapter must provide the following information:

- (1) The location of the public project.
- (2) A general description of the public project.
- (3) A description of areas of qualification required for performance of the work, such as experience, management resources, and financial capability.
- (4) The basis upon which the most qualified offerors will be determined.
- (5) Any other requirements for the submission of statements of qualifications.

Sec. 3. A potential design-builder submitting proposals for the public project must submit a verified statement of qualifications setting forth the qualifications of the potential design-builder and provide the other information required by the request for qualifications.

Sec. 4. The technical review committee shall determine the relative ability of each person to perform the services required for each project. Determination of ability may include consideration of any of the following:

- (1) The design-builder's experience.
- (2) The design-builder's financial and bonding capacity.
- (3) The design-builder's managerial resources.
- (4) The design-builder's safety record.

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(5) The design-builder's past performance and capacity to perform.

(6) The design-builder's ability to complete the work in a timely and satisfactory manner.

(7) Other selection criteria set forth in the request for qualifications.

Sec. 5. The technical review committee may not consider cost related or price related evaluation factors.

Sec. 6. (a) The technical review committee shall select at least three (3) and not more than five (5) potential design-builders considered to be the most highly qualified to perform the required services. However, the technical review committee may submit fewer than three (3) design-builders if all members of the technical review committee sign a written statement that fewer than three (3) proposals responsive to the request for qualifications were received from qualified design-builders.

(b) The technical review committee shall report the selection of qualified design-builders to the public agency.

Chapter 6. Request for Proposals

Sec. 1. The public agency shall issue a request for proposals to the potential design-builders selected under IC 5-27-5-6. Each request for proposals must contain a design criteria package.

Sec. 2. (a) The design criteria developer shall prepare the design criteria package.

(b) The design criteria developer may not submit a proposal or furnish design or construction services under the contract.

(c) The design-builder may not delegate or subcontract design services or construction services under the design-build contract to the design criteria developer.

Sec. 3. (a) The public agency shall determine the scope and level of detail required for the design criteria package.

(b) The design criteria package must specify the design criteria necessary to describe the public project, which may include, as appropriate, the following:

- (1) A legal description and survey of the site.
- (2) Interior space requirements.
- (3) Special material requirements.
- (4) Material quality standards.
- (5) Conceptual design criteria for the project.
- (6) Special equipment requirements.
- (7) Cost or budget estimates.
- (8) Quality assurance and quality control requirements.

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- (9) Site development requirements.
- (10) Compliance with applicable codes and ordinances.
- (11) Permits and connections to utilities.
- (12) Requirements for storm water and roads.
- (13) Parking requirements.
- (14) Soil borings and geotechnical information or performance specifications.
- (15) Life cycle costing and energy consumption requirements.
- (16) Any other applicable requirements.

Sec. 4. In addition to the design criteria package, a request for proposals must include the following:

- (1) Instructions.
- (2) Proposal forms.
- (3) General and special conditions.
- (4) The basis for evaluation of proposals, including a description of the selection criteria with the weight assigned to each criteria.
- (5) Any other instructions, documents, or information relevant to the public project that the public agency considers relevant.

Sec. 5. The request for proposals must include the requirement that a proposal be submitted in two (2) packages, a qualitative proposal and a price proposal.

Chapter 7. Selection and Award

Sec. 1. A proposal in response to a request for proposals described in IC 5-27-6 must satisfy the following:

- (1) The qualitative proposal and the price proposal must be submitted simultaneously in separately sealed and identified packages. The price proposal must remain sealed until opened in public under section 5 of this chapter.
- (2) A proposal must identify each person with whom the offeror proposes to enter into subcontracts for primary design services and primary construction services under the design-build contract. The public agency may determine requirements under this section.
- (3) The price proposal must:
 - (A) contain one (1) lump sum cost of all design, construction engineering, inspection, and construction costs of the proposed project; and
 - (B) establish a maximum cost of the design-build contract that will not be exceeded if the proposal is accepted without change.

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(4) The qualitative proposal must include all documents, information, and data requested in the request for proposals.

Sec. 2. (a) The public agency shall submit the qualitative proposals to the technical review committee.

(b) The public agency may require clarifications from an offeror to ensure conformance of proposals with the design criteria.

(c) The technical review committee may not consider a proposal until the design criteria developer provides its professional opinion that the proposal conforms with the design criteria.

Sec. 3. (a) The technical review committee shall review the qualitative proposals and establish a score for each qualitative proposal based on the factors, weighting, and process identified in the request for proposals.

(b) The technical review committee shall give a written composite score for each qualitative proposal.

Sec. 4. The public agency shall notify all offerors of the date, time, and location of the public opening of the sealed price proposals at least seven (7) days before the opening date.

Sec. 5. The public agency shall publicly open the sealed price proposals and divide each offeror's price by the score that the technical review committee has given to it to obtain an adjusted price.

Sec. 6. The public agency shall accept the proposal that provides the public agency with the lowest adjusted price. The public agency is not required to accept the lowest price proposal.

Sec. 7. The public agency may reject any and all proposals, except for the purpose of evading the provisions and policies of this article. A public agency must make a rejection of proposals under this section in a written document that states the reasons for rejecting proposals.

Sec. 8. (a) The public agency may negotiate any contract term with the offeror selected under section 6 of this chapter, except for those terms identified in the request for proposals as nonnegotiable.

(b) If the public agency is unable to negotiate a contract with its first selection, the public agency may:

(1) suspend or end negotiations with that offeror; and

(2) negotiate with the next lowest adjusted price offeror.

A public agency shall continue in accordance with this procedure until a contract agreement is reached or the selection process is terminated.

Sec. 9. (a) Unless and until a proposal is accepted, the drawings,

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specifications, and other information in the proposal are the property of the offeror.

(b) After a proposal is accepted, ownership of the drawings, specifications, and information in the drawings and specifications shall be determined under Indiana law and the terms of the design-build contract.

Chapter 8. Miscellaneous Provisions

Sec. 1. A design-build contract may be conditional upon subsequent refinements in scope and price and may permit the public agency to make changes in the scope of the project without invalidating the design-build contract.

Sec. 2. (a) A person identified under IC 5-27-7-1 as a person with whom the design-builder proposes to enter into subcontracts for primary design services and primary construction services under the design-build contract may not be replaced without the approval of the public agency.

(b) If a design-builder violates subsection (a), the public agency may cancel the award of a design-build contract.

Sec. 3. After award, the maximum cost established in the successful proposal may be adjusted by negotiated agreement between the public agency and the design-builder to reflect modifications in the proposed design-build project.

Sec. 4. (a) The public agency shall require the design-builder to furnish performance and payment bonds for the project.

(b) A performance or payment bond is not required for, and does not provide coverage for, the part of a design-build contract that includes design services only.

(c) Subsection (b) does not impair the public agency's ability to seek recovery under the contract from the design-builder for errors, omissions, or defects in the design services.

Sec. 5. A public agency may not, with respect to a public project covered by this article, require an offeror to:

- (1) make application to;
 - (2) furnish financial data to; or
 - (3) obtain any of the surety bonds, or surety bond components of wrap-up insurance, that is specified in connection with a design-build contract or specified by any law from;
- any particular insurance or surety company, agent, or broker.

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